

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
November 15, 2010 Session

**BETTY LOU GRAHAM v. SEQUATCHIE VALLEY EMERGENCY  
MEDICAL SERVICES, INC., ET AL.**

**Appeal from the Circuit Court for Marion County  
No. 10116 Thomas W. Graham, Judge**

---

**No. M2009-02444-WC-R3-WC - Mailed - January 26, 2011  
Filed - April 14, 2011**

---

The employee filed a pro se post-judgment petition alleging that her employer had improperly denied court-ordered medical benefits to her, and she sought damages. Her employer moved to dismiss based upon expiration of the statute of limitations and other grounds. The employee contended that she was incompetent for an extended period of time after the alleged denial of medical care and that the limitation period was therefore tolled. The trial court held that her petition was barred by the statute of limitations and dismissed it. The employee has appealed from this decision. We affirm the judgment.<sup>1</sup>

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit  
Court Affirmed**

WALTER C. KURTZ, SR.J., delivered the opinion of the Court, in which CORNELIA A. CLARK, C.J., and JON KERRY BLACKWOOD, SR.J., joined.

Betty Lou Graham, Jasper, Tennessee, Pro Se.

Brian C. Neal, Nashville, Tennessee, for the appellees, Sequatchie Valley Emergency Medical Services, Inc., Marion County Ambulance Services, Inc. and Liberty Mutual Insurance Company.

**MEMORANDUM OPINION**

---

<sup>1</sup> Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

## Factual and Procedural Background

Betty Graham was injured in an automobile accident in the course of her employment in August 1991. Her workers' compensation claim was heard in the trial court. Judgment was entered on August 6, 1999, finding that she had compensable low back and psychological injuries. Permanent and temporary disability benefits and future medical benefits were awarded. On June 12, 2009, Ms. Graham filed a document titled "Contempt of Court and Refusal to Adhere to a Court Order" [hereinafter referred to as "Petition"]. In her Petition, she alleged that beginning in December 2006, Liberty Mutual, her employer's workers' compensation insurer, refused to pay for unspecified psychiatric medications and that as result she had suffered a breakdown and was hospitalized in January 2007. The Petition requested a resumption of medications and an award of \$3,000,000.00 in damages.

Liberty Mutual filed a response to the Petition, which stated, inter alia, that Ms. Graham had failed to attend a court-ordered psychiatric evaluation in late 2006 which resulted in its decision to deny approval of additional medication.<sup>2</sup> Liberty Mutual further took the position that the workers' compensation law provided the exclusive remedy for Ms. Graham's claims. It requested dismissal of her Petition on the grounds that damages are not recoverable under the workers' compensation law and that her claim was barred by the applicable one-year statute of limitations.

The trial court held a hearing on August 19, 2009. At that hearing, Ms. Graham took the position that the limitation period had been tolled pursuant to Tennessee Code Annotated section 28-1-106 (2000) because she was incompetent due to unsound mind for a period of eighteen months after her January 2007 hospitalization. The trial court asked the parties to file supplemental briefs on the issue. Ms. Graham filed a package of documents which she titled "Submitted Additional Evidence as Requested by the Court and Judge Graham." This package consisted of unverified medical records and copies of some cases. Liberty Mutual objected to the additional evidence.

The most significant document contained in Ms. Graham's submission is a letter dated August 25, 2009, from her treating psychiatrist, Dr. Keith Ferguson, in which he stated:

After [Ms. Graham's] break down, caused by her medication coverage being denied by Liberty Mutual her condition decompensated requiring hospitalization at Valley [Hospital from 1/08/07 until 1/17/07]. She was doing relatively well after about nine days. One complication after this event is the on going fear of a relapse due to missing her

---

<sup>2</sup> It appears that Liberty Mutual is now providing the medications at issue.

medications. . . . Although, this episode of decompensation in 2007, did improve after nine days of treatment there are no guarant[ees] it would respond favorably again.

The trial court issued a written decision on October 22, 2009. It found that Ms. Graham's cause of action arose no later than January 2007 and that there was no evidence to support her allegation that she was incompetent for eighteen months. It granted Liberty Mutual's motion to dismiss. Ms. Graham has appealed, contending that the trial court erred by dismissing her complaint.

### **Standard of Review**

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Madden v. Holland Grp. of Tenn., Inc.*, 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

### **Analysis**

In its written decision, the trial court stated:

The Court has reviewed the rather tortured and voluminous pleadings filed by the Plaintiff and concludes that these pleadings raise a cause of action which accrued at the latest sometime in late January 2007. The Court further finds that the sum and total of these pleadings relative to any issues of unsound mind contain no more than conclusory statements not supported by the evidence and insufficient to establish the continuing debilitation required to toll the applicable statutes of limitation for the additional one and one-half years that would be necessary to reach the June 12, 2009 filing date in this case. The Court has reached this even taking into consideration the improperly

submitted evidence of her medical treatment received at Valley Hospital.

The court is mindful that the appellant is pro se. Judge (now Justice) Koch has stated the applicable law related to pro se litigants:

We have consistently held that parties who decide to represent themselves are entitled to fair and equal treatment by the courts, *see, e.g., Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997), and that trial courts must take into account that many pro se litigants have no legal training and little familiarity with the judicial system, *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). That having been said, we must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Pro se litigants should not be permitted to shift the burden of litigating their cases to the courts or to their adversaries. Thus, trial courts should not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Edmundsun v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995).

*Wilkerson v. Ekelem*, No. M2002-00841-COA-R3-CV, 2004 WL 578600, at \*2 (Tenn. Ct. App. Mar. 24, 2004).

The statute of limitations for personal injury actions is one year. Tenn. Code Ann. § 28-3-104(a)(1) (2000). The limitation period for actions brought under the workers' compensation law is also one year. Tenn. Code Ann. § 50-6-203 (2008). Ms. Graham contended that she was injured in January 2007 as a result of Liberty Mutual's actions; however, her Petition was not filed until June 2009, more than two years after the injury. Therefore, her claim was barred unless she was able to demonstrate that the limitation period was tolled until June 2008.

She contends that tolling occurred because she was of an unsound mind, as contemplated by Tennessee Code Annotated section 28-1-106. The burden of proving that one was under a disability which tolled the limitation period under that section is upon the person seeking the benefit of the statute. *Gross v. Disney*, 95 Tenn. 592, 32 S.W. 632, 633 (1895); *see generally* 1 Lawrence A. Pivnik, *Tennessee Circuit Court Practice* § 1:8 (2010 ed.) (Limitations of Action - Tolling).

The standard to be applied is explained in a case directly addressing the tolling of the statute of limitations because of mental disability:

The civil standard of competence is well-established and originated in *Porter v. Porter*, 22 Tenn. (3 Hum.) 586, 589 (1842), in which this Court held that a person is of “unsound mind” if the person is “incapable of attending to any business, or of taking care of herself.” *Id.* The *Porter* formulation remains generally consistent with the common understanding of “unsound mind,” and is consistent with the decisions of other jurisdictions discussing incompetency for purposes of tolling statutes of limitations. *See Doe v. Coffee County Bd. of Educ.*, 852 S.W.2d 899 (Tenn. Ct. App. 1992) (citing cases from other jurisdictions); *see also* C.S. Patrinelis, Annotation, *Proof of Unadjudged Incompetency Which Prevents Running of Statute of Limitations*, 9 A.L.R.2d 964 (1950). Accordingly, we hold that due process requires tolling of the post-conviction statute of limitations only if a petitioner shows that he is unable either to manage his personal affairs or to understand his legal rights and liabilities.

*State v. Nix*, 40 S.W.3d 459, 463 (Tenn. 2001); *see Sherrill v. Souder*, 325 S.W.3d 584, 599-601 (Tenn. 2010) (detailed discussion of level of incompetency required to toll statute of limitations); *see also Seaton v. Seaton*, 971 F. Supp. 1188, 1195 (E.D. Tenn. 1997) (holding that mental illness does not equate to a finding of incompetence so as to toll statute of limitations).

Ms. Graham appears to assert that the materials contained in her “Submitted Additional Evidence as Requested by the Court and Judge Graham” constitute evidence which preponderates against the trial court’s determination that she failed to demonstrate that she was incompetent from January 2007 until approximately August 2008. We are unable to agree with that assertion. Assuming, *arguendo*, that the contents of the “Submitted Additional Evidence” were properly before the trial court, this evidence, specifically Dr. Ferguson’s letter, suggests that Ms. Graham was or may have been disabled or incompetent for a period of nine days in January 2007. There is no medical evidence to support the conclusion that she was incompetent for any other period of time.

In addition, we note that the statement of the facts in Ms. Graham’s brief refers to an appearance by her at a General Sessions Court hearing in February 2007 and two lawsuits filed in United States District Court. The first federal lawsuit was filed in February 2008, and the second lawsuit was filed in December 2008. In support of its motion to dismiss,

Liberty Mutual filed copies of various documents from those actions. Those documents include a memorandum decision of Chief Judge Collier of the United States District Court for the Eastern District of Tennessee dismissing the December 2008 lawsuit. From that order, it is reasonably clear that the allegations in both federal actions were essentially the same as the allegations in the Petition at issue here. The fact that Ms. Graham filed and prosecuted those actions tends to demonstrate that she was competent to initiate and prosecute this action long before June 12, 2009.<sup>3</sup>

We agree with the trial court that it is unnecessary to determine whether Ms. Graham's Petition is based upon tort principles or workers' compensation law. In either case, it was not filed within the statutory limitation period. Although she contends that she was disabled for eighteen months beginning in January 2007, there is no competent evidence to support this contention. We find that the trial court correctly concluded that her action was barred.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to Betty Lou Graham, and her surety, for which execution may issue if necessary.

---

WALTER C. KURTZ, SENIOR JUDGE

---

<sup>3</sup> Judge Collier found the federal cases to be frivolous and stated that he viewed Ms. Graham as a prolific litigator. Not only were Federal Rules of Civil Procedure 11 sanctions imposed, but she was enjoined from filing any more lawsuits against Liberty Mutual and its lawyers. The history of Ms. Graham's attempts to litigate this same claim in federal court is found in the most recent decision by Judge Collier. *Graham v. Davis*, 2010 WL 446933 (E.D. Tenn. Feb. 2, 2010).

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE  
November 15, 2010 Session

**BETTY LOU GRAHAM v. SEQUATCHIE VALLEY EMERGENCY  
MEDICAL SERVICES, INC. ET AL.**

**Circuit Court for Marion County  
No. 10116**

---

**No. M2009-02444-WC-R3-WC - Filed - April 14, 2011**

---

**JUDGMENT**

This case is before the Court upon the motion for review filed by Betty Lou Graham pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Betty Lou Graham and her surety, for which execution may issue if necessary.

CLARK, C.J., NOT PARTICIPATING